

**LYNCHBURG CITY COUNCIL
Agenda Item Summary**

MEETING DATE: **December 14, 2004**

AGENDA ITEM NO.: 17

CONSENT:

REGULAR: **X**

CLOSED SESSION:
(Confidential)

ACTION: **X**

INFORMATION:

ITEM TITLE: **Zoning Ordinance Amendment – Section 35.1-12, Zoning Administrator**

RECOMMENDATION: Approval of the requested Zoning Ordinance Amendments.

SUMMARY: The City's Zoning Ordinance and Comprehensive Plan make reference to a Zoning Administrator, however the Zoning Ordinance does not provide for the appointment of such an official. The proposed amendments would allow the City Manager to appoint a Zoning Administrator who shall have the responsibility for the administration and enforcement of the Zoning Ordinance. The appointment of a Zoning Administrator would not require the hiring of additional staff. The proposed Zoning Ordinance amendments are consistent with Chapter 15.2-2286 of the Code of Virginia.

PRIOR ACTION(S):

December 1, 2004: Planning Division recommended approval of the Zoning Ordinance Amendments.
Planning Commission recommended approval 5-0 (with 2 members absent) of the Zoning Ordinance Amendments.

FISCAL IMPACT: N/A

CONTACT(S):

Rachel Flynn / 455-3902
Tom Martin / 455-3909

ATTACHMENT(S):

- Ordinance
- Chapter 15.2-2286 of the Code of Virginia
- PC Report
- PC Minutes

REVIEWED BY: lkp

ORDINANCE

AN ORDINANCE TO AMEND AND REENACT SECTION 35.1-12 OF THE CODE OF THE CITY OF LYNCHBURG, 1981, THE AMENDED SECTION RELATING TO THE ADMINISTRATION AND ENFORCEMENT OF THE CITY'S ZONING ORDINANCE.

BE IT ORDAINED BY THE COUNCIL OF THE CITY OF LYNCHBURG:

1. That in order to promote the public necessity, convenience, general welfare and good zoning practice that Section 35.1-12 of the Code of the City of Lynchburg, 1981, be and the same is hereby amended and reenacted as follows:

Sec. 35.1-12. General.

(a) Development permission.

(1) Certificate of occupancy. No lot, building or structure shall hereafter be used by any person or organization until such person or organization has obtained from the City of Lynchburg an occupancy permit specifying the proposed use, the extent of the property and such other information as shall be determined by the city council to be necessary to the effective operation of these and other duly enacted city regulations.

(2) Building permit. No building or structure or part thereof shall be erected, enlarged or altered by any person or organization until such person or organization has met all site plan requirements and has obtained from the City of Lynchburg a building permit specifying the use and method of construction of such building, structure or alteration, including such information as is determined by the city council to be necessary to the effective operation of these regulations.

(b) Conformance to building and occupancy permits.

(1) Occupancy permit. The use of any lot, building or structure shall hereafter conform to the terms of the occupancy permit duly issued for that lot, building or structure and to the regulations of this ordinance.

(2) Building permit. The construction, design and use of every building, structure or alteration shall conform to the terms of the building permit duly issued for that building, structure or alteration.

(c) Conformance of building and occupancy permits to city ordinances. No building or occupancy permit shall be issued which is not in conformance with this ordinance and other pertinent regulations of the City of Lynchburg.

(d) Zoning administrator . The administration and enforcement of the zoning ordinance shall be the responsibility of the zoning administrator. The zoning administrator shall be appointed by the city manager and in administering and enforcing the zoning ordinance the zoning administrator shall have all of the responsibilities, duties and powers set forth in Title 15.2, Chapter 22, Article 7, and in particular, Section 15.2-2286 of the Code of Virginia, and any successors or amendments thereto. The city shall also employ such zoning officials as may be necessary to assist the zoning administrator in the administration and enforcement of the zoning ordinance.

~~(e d)~~ Division of inspections. ~~The administration and enforcement of this zoning ordinance shall be the responsibility of the division of inspections.~~ The division of inspections shall receive applications for building and occupancy permits and other permits specified by this ordinance and shall administer the review and approval of such permits under these regulations. The division shall also ensure the conformance of building and use permit conditions to all applicable city regulations.

~~(f e)~~ Procedure for review and issuance of development permission. Application for any permit regulated by this ordinance shall be made to the division of inspections. If the division of inspections finds that the

requested permission is in conformance with the regulations for uses permitted by right or as accessory uses in this ordinance and with other applicable city regulations, the division of inspections shall issue a building or occupancy permit as requested. If the requested use or construction requires site plan review, a conditional use permit, planned unit development or any other special permission described in this article, the division of inspections shall transmit the application to the division of planning.

(g f) Planning commission. The planning commission shall review and recommend action on conditional use permits and specified site plan review, including that for planned unit developments, and shall make determinations on the appropriateness to zoning districts of uses not listed specifically in this ordinance. The planning commission shall also recommend action to the city council on amendments to this ordinance, initiate action on applications for planned unit developments and perform other actions for the city council relating to this ordinance.

(h g) City council. The city council has primary responsibility for the enactment and amendment of this ordinance.

(i h) The board of zoning appeals.

(1) Organization. The board of zoning appeals shall consist of five (5) residents of the City of Lynchburg, appointed by the circuit court of the City of Lynchburg. Their terms of office shall be five (5) years, with the term of one (1) member expiring in each year. The secretary of the board shall notify the court at least thirty (30) days in advance of the expiration of any term of office and shall also notify the court promptly if any vacancy occurs. Appointments to fill vacancies shall be only for the unexpired portion of the term. Members may be reappointed to succeed themselves. Members of the board shall hold no other public office in the city except that one (1) may be a member of the planning commission. A member whose term expires shall continue to serve until his successor is appointed and qualifies.

The board shall elect from its own membership its officers who shall serve annual terms as such and may succeed themselves. For the conduct of any hearing and the taking of any action, a quorum shall not be less than a majority of all members of the board. The board may make, alter and rescind rules and forms for its procedures, consistent with ordinances of the City of Lynchburg, Virginia, and general laws of the commonwealth for the conduct of its affairs. The board shall keep a full public record of its proceedings and shall submit a report of its activities to the city council at least once each year.

Within the limits of funds appropriated by the city council, the board may employ or contract for secretaries, clerks, legal counsel, consultants and other technical and clerical services. Any board member may be removed for malfeasance, misfeasance or nonfeasance in office, or for other just cause, by the court that appointed him, after hearings held after at least a fifteen (15) day notice.

(2) Powers and duties:

a. To hear and decide appeals from any order, requirement, decision or determination made by an administrative officer in the administration or enforcement of this ordinance. No such appeal shall be heard by the board except after notice and hearing as provided by Section 35.1-19.

b. To authorize upon appeal or original application in specific cases such variance as defined in Section 35.1-13(a) from the terms of this ordinance as will not be contrary to the public interest when owing to special conditions, a literal enforcement of the provisions will result in unnecessary hardship. Such authorization shall be in conformance with Section 35.1-13 of this chapter.

c. To hear and decide applications for interpretation of the district map where there is an uncertainty as to the location of a district boundary. After notice to the owners of the property affected by any such question, and after public hearings with notice as required by Section 35.1-19, the board may interpret the official zoning map in such a way as to carry out the intent and purpose of the ordinance for the particular section or district in question as specified in Section 35.1-6. The board shall not have the power, however, to rezone property or to change the locations of district boundaries as established by ordinance.

No provisions of this section shall be construed as granting the board the power to rezone property.

d. To grant upon written application, in restricted areas, conditional use permits, revocable upon thirty (30) days' notice from the zoning administrator, for the following uses only:

1. The use of an open lot for storage purposes not permitted by this ordinance; provided no building or structure is to be erected other than a small office or quarters for a watchman;

2. The use of any building or structure, existing on the effective date of this chapter, for business or industrial purposes; provided that there will not be any exterior structural alterations or additions to such building or structure; and provided further, that only such mechanical equipment or machinery may be used in connection with the use of such lot, building or structure as deemed appropriate by the board. The board may, at its discretion, authorize a sign which may be necessary to identify any business or industrial use for which a conditional use permit is approved in accordance with the provisions of this section. A conditional use permit shall be granted only to the person(s) who will actually conduct the business or industrial use for which said permit is sought, and such permit shall not be transferable.

e. The board may impose such conditions relating to the use for which a permit is granted as it may deem necessary in the public interest and may require a guarantee or bond, payable to the City of Lynchburg, in such amount and for such period of time as the board may designate to ensure that the conditions imposed are being and will continue to be complied with.

f. No such permit may be granted except after notice and hearing as provided in Section 35.1-19.

(3) Rules, hearings, records and minutes. The board shall adopt from time to time such rules and regulations as it may deem necessary to interpret and carry into effect the provisions of this ordinance. Meetings shall be held at the call of the chairman and at such other times as the board may determine. Such chairman or, in his absence, the vice chairman, may administer oaths and compel the attendance of witnesses. All hearings of the board shall be open to the public. The board shall keep minutes of its proceedings, showing the vote of each member upon each question or, if absent or failing to vote, indicating such fact, and shall keep records of its examinations and other official actions, all of which shall be immediately filed in the office of the board and shall be a public record. A copy of the minutes of each meeting shall be sent to the secretary of the planning commission. The presence of three (3) members shall constitute a quorum. The concurring vote of three (3) members of the board shall be necessary to reverse any order, requirement, decision or determination of the inspector, or to decide in favor of the applicant on any matter upon which it is required to pass under the ordinance, or to affect any variation in this ordinance.

(j i) Fees for development permission. In order to cover costs by the City of Lynchburg incidental to the review, hearing and reporting of the processing of development permissions, the following fees shall be required to accompany applications for such permissions:

(1) Application for development permission (building permit) of a use permitted by right is as per fee schedule of the city building code.

(2) Application for a conditional use permit to the board of zoning appeals or for a variance shall be accompanied by a check payable to the City of Lynchburg for each petition submitted in the amount set forth in the fee schedule adopted by city council.

2. That this ordinance shall become effective upon its adoption.

Adopted:

Certified:

Clerk of Council

The Department of Community Planning & Development
City Hall, Lynchburg, VA 24504 434-455-3900

To: Planning Commission
From: Planning Division
Date: December 1, 2004
Re: **Zoning Ordinance Amendment – Zoning Administrator**

I. PETITIONER

City of Lynchburg, P.O. Box 60, Lynchburg, VA 24504

Representative: Tom Martin, AICP, City Planner, Planning Division, P.O. Box 60, Lynchburg, VA 24504

II. LOCATION

Not Applicable

Property Owners: Not Applicable

III. PURPOSE

The purpose of the Zoning Ordinance Amendment is to provide for the appointment of a Zoning Administrator who shall have the responsibility for the administration and enforcement of the Zoning Ordinance.

IV. SUMMARY

- The Zoning Ordinance Amendments would provide for the appointment of a Zoning Administrator.
- The appointment of a Zoning Administrator would not require the hiring of additional staff.
- The proposed Zoning Ordinance amendments are consistent with Chapter 15.2-2286 of the Code of Virginia.

The Planning Division recommends approval of the Zoning Ordinance Amendment.


V. FINDINGS OF FACT

1. **Comprehensive Plan.** One of the key elements in implementing the City's Comprehensive Plan is the Zoning Ordinance. The *Comprehensive Plan 2002 – 2020* lists several areas of the Zoning Ordinance that needs to be revised. (pg 5.10)
2. **Zoning.** The proposed revisions would allow for the appointment of a Zoning Administrator and clarify the responsibility for enforcement of the Zoning Ordinance.
3. **Board of Zoning Appeals (BZA).** Not Applicable.
4. **Surrounding Area.** Not Applicable.
5. **Site Description.** Not Applicable.
6. **Proposed Use of Property.** Not Applicable.
7. **Traffic and Parking.** Not Applicable.
8. **Storm Water Management.** Not Applicable.
- a. **Impact.** Chapter 15.2-2286 of the Code of Virginia allows localities to appoint a Zoning Administrator who shall have the responsibility for the administration and enforcement of the Zoning Ordinance. The City's Zoning Ordinance and Comprehensive Plan make references to a Zoning Administrator, however the Zoning Ordinance does not provide for the appointment of such an official. The Zoning Ordinance currently states that the administration and enforcement of the Zoning Ordinance shall be the responsibility of the Division of Inspections. Due to organizational changes within the Department of Community Planning & Development this has not been the case for several years. Allowing for the appointment of a Zoning Administrator will not require the hiring of new staff. Most likely the City Manager will appoint one of the existing Zoning Officials as Administrator. This City staff person will make final determinations on all administrative zoning issues.
9. **Technical Review Committee.** Not Applicable

VI. PLANNING DIVISION RECOMMENDATION

Based on the preceding Findings of Fact, the Planning Commission recommends to the City Council approval of amending Section 35.1-12, General, to provide for the appointment of a Zoning Administrator who shall have the responsibility for the administration and enforcement of the Zoning Ordinance.

This matter is respectfully offered for your consideration.



William T. Martin, AICP
City Planner

pc: Mr. L. Kimball Payne, III, City Manager
Mr. Walter C. Erwin, City Attorney
Ms. Rachel O. Flynn, Director of Community Planning & Development
Mr. Bruce A. McNabb, Director of Public Works
Mr. R. Douglas Dejarnette, Fire Marshal
Mr. Robert Drane, Building Commissioner
Mr. J. Lee Newland, Director of Engineering
Mr. Gerry L. Harter, Traffic Engineer
Mr. Keith Wright, Neighborhood Program Coordinator
Mr. Robert S. Fowler, Zoning Official

VII. ATTACHMENTS

1. **Zoning Ordinance Amendments**
(see attached Ordinance)
2. **Chapter 15.2-2286 of the Code of Virginia**
(see attached code section)

MINUTES FROM THE DECEMBER 1, 2004 PLANNING COMMISSION MEETING

These minutes have been reviewed but not approved by the Planning Commission.

Consideration of amending Section 35.1-12, General of the Zoning Ordinance to allow the City Manager to appoint a Zoning Administrator who shall be responsible for the administration and enforcement of the Zoning Ordinance and who shall have all of the responsibilities, duties and powers set forth in Title 15.2, Chapter 22, Article 7, and in particular, Section 15.2-2286 of the Code of Virginia, and any successors or amendments thereto.

Mr. Martin explained that the Zoning Ordinance made reference to a Zoning Administrator, however, it did not provide for his or her appointment. He said what occasionally happened in the office was that there would be a disagreement on the interpretation of the Zoning Ordinance. He continued by saying that the Zoning Administrator's responsibility would be to have the final say on the interpretation of that Ordinance, but would not require the hiring of any additional staff. Mr. Martin added that what would probably happen was that the City Manager would appoint one of the existing Zoning Officials.

Commission Bacon asked how many Zoning Officials were currently employed by the City.

Mr. Martin said there were two Zoning Officials and a Neighborhood Services Coordinator, who was the Zoning Officials' supervisor, so there were a total of three. One of those three would be the Administrator.

Commissioner Worthington made the following motion, which was seconded by Commissioner Hamilton and passed by the following vote:

"That the Planning Commission recommends to the City Council approval of amending Section 35.1-12, General, to provide for the appointment of a Zoning Administrator who shall have the responsibility for the administration and enforcement of the Zoning Ordinance."

AYES:	Bacon, Dahlgren, Flint, Hamilton, Worthington	5
NOES:		0
ABSTENTIONS:		0